

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)
)
Satellite Delivery of Network Signals)
to Unserved Households for)
Purposes of the Satellite Home)
Viewer Act)
)
Part 73 Definition and Measurement)
of Signals of Grade B Intensity)

CS Docket No. 98-201

RM No. 9335

RM No. 9345

To: The Commission - Mail Stop 1170

COMMENTS OF MONTGOMERY COMMUNICATIONS, INC.

1. Introduction. Montgomery Communications, Inc. ("Montgomery") hereby submits these comments in response to the Commission's *Notice of Proposed Rule Making* ("NPRM") in the above-captioned proceeding, FCC 98-302, released November 17, 1998. Montgomery is the licensee of the FOX Network affiliate serving the Topeka DMA. As Montgomery is a broadcast affiliate providing programming to the public, Montgomery has an interest in this proceeding. Montgomery urges the Commission to recognize that the changes proposed by the petitions filed by the National Rural Telecommunications Cooperative ("NRTC") and EchoStar Communications Corporation ("EchoStar") are unnecessary and detrimental to both broadcasters and the viewing public. No changes are needed to current standards for determining local service; rather, the current law should be enforced. Accordingly, the Commission should decline to adopt the changes proposed in the NPRM regarding methods for determining whether a household is "unserved" by local network

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affiliated television broadcast stations for purposes of the 1988 Satellite Home Viewer Act (“SHVA”).¹

2. Localism. The principles of localism and the economic viability of local stations will be adversely affected by the modification of the definition of television signal intensity of Grade B contours for purposes of the SHVA. As the Commission recognizes in the NPRM, Congress was concerned that without copyright protection, the economic viability of local stations, specifically those affiliated with national broadcast networks, might be jeopardized, thus undermining one important source of local information.² The changes proposed in the NPRM would slash the size of local television station audiences, attacking the very viability that Congress sought to protect. As audiences diminish, so will advertising diminish and stations will be deprived of resources used to provide local news and public service programs.

3. The difficulties experienced by viewers in the Topeka area who complain of no local reception is attributable to removal of antennas upon purchasing a dish and obtaining a network package from the satellite provider.³ As a result of the broadcasters enforcing their copyrights, the viewers are finding it necessary to replace their antennas. In some cases, the antenna is re-installed inadequately so that the signal received is unacceptable. These viewers are not “unserved” according

¹ 17 U.S.C. § 119 (1998).

² See NPRM at ¶3.

³ Montgomery serves ____ households in the Topeka DMA and has conducted ____ tests from _____ to _____ to determine if a household is “unserved” for purposes of the SHVA. Of those cases, approximately only 8 households were determined unable to receive an over-the-air signal. In those cases, Montgomery consented to the provision of satellite service when it was determined that the households were unable to receive an over-the-air signal.

to any reasonable definition but rather have relied upon a satellite industry who misled them and represented that local stations would be available when such provision was unlawful.⁴

4. These viewers will not be denied access to broadcast network service if they lose their satellite network package. Broadcast network service will be readily available over-the-air and will always be available to viewers free of charge. Additionally, broadcast network service will be provided from local stations, providing local news and broadcasting of interest to the communities of license. This local service is not available from the satellite providers in any case and its loss would be detrimental to the public interest.

5. Not only will the reduction of copyright protection for network programming adversely affect local interests by diminishing local broadcasting, but additional impacts will be felt by local and state governments, police, fire, and other safety organizations who rely on the ability of local broadcast television to reach the public. The Commission has adopted EAS rules whereby the main resource for the public to learn about public safety issues such as disaster and weather concerns is through broadcast to the local communities by local broadcast stations. Reduction of copyright protection, resulting in less local broadcasting received by communities, would diminish the dissemination of information to communities in times of crisis. Additionally, viewers would have more difficulty obtaining information on other issues of public importance, such as, for example, information on elections and city council issues. Making it more difficult for viewers to

⁴ The petitions are being offered under the guise of subscribers being cut-off from such programming. However, the Commission recognizes that in the Miami and Raleigh cases the evidence strongly suggests that many, if not most, of those subscribers do not live in "unserved households" under any reasonable interpretation of the term. See NPRM at ¶15.

obtain such information is contrary to the fundamental localism concept embraced by the Commission and the Communications Act.

6. Financial considerations. Most broadcast stations, especially affiliates, have expended significant capital to obtain the best possible programming to provide to its viewers. By reducing the copyright protection of the SHVA, the programming and copyrights owned by broadcasters will be seriously devalued. Devaluing the copyrights would also devalue the stations themselves. If subscribers are able to get network programming on a satellite system, there is no reason for those subscribers to watch local stations. If viewers do not watch local stations, then local commercials for local advertisers will also not be seen. If the commercials are not seen by viewers, the advertisers will not continue to advertise on the station, and hence the station will suffer significant loss of income.

7. Digital service. Reduction of copyright protection for network programs will further impact the transition of small broadcasters to digital service. Diminished advertising revenues and diminished station values will result difficulty for broadcasters to obtain the necessary capital for the transition to digital. Small broadcast stations especially will find it difficult to afford the transition to digital under such conditions.

8. Conclusion. Localism and the economic viability of local stations have been paramount considerations of the Commission and Congress. Providing for reduced copyright protection as proposed in the NPRM will result in a loss of localism and will jeopardize the economic viability of local stations. While enhancing competition may be a laudable goal, competition to cable should not be achieved at the expense of broadcasters, especially small broadcasters serving the public need and local interests. This is especially true when the assistance

which will be provided is to the satellite industry which has misled and deceived their customers by representations that such programming is available when it is clearly is not available lawfully. The satellite industry should not be rewarded for its improper practices, especially when subscribers will not lose access to broadcast network programing but will remain able to receive free, over-the-air broadcasts from local affiliates, in addition to other local information that is imperative to health and safety. If satellites are to deliver terrestrial broadcast signals, localism and competition must be protected by the carriage of local broadcast stations in every market pursuant to must-carry and retransmission consent provisions comparable to those for cable.

WHEREFORE, we respectfully request that the Commission consider the foregoing Comments and refrain from reducing the protection afforded by the SHVA.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michelle A. McClure", is written over a horizontal line.

Peter Tannenwald
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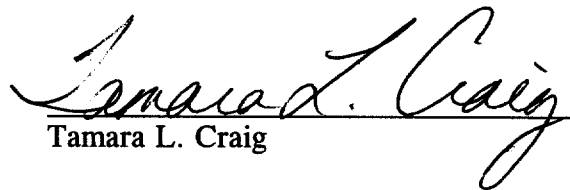
CERTIFICATE OF SERVICE

I, Tamara L. Craig, hereby certify that on this 11th day of December, 1998, copies of the foregoing "Comments of Montgomery Communications, Inc." have been served by first class mail, postage prepaid, upon the following:

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